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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

800 Date Base Access Tariffs and the)

800 Service Management System Tariff)

CC Docket No. 93-129

**COMMENTS OF ALLNET COMMUNICATION SERVICES
ON DIRECT AND SUPPLEMENTAL CASES OF
THE BELL OPERATING COMPANIES**

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SUMMARY

As will be demonstrated herein, the direct and supplemental cases of the following LECS - Ameritech, Bell Atlantic, BellSouth, NYNEX, Pacific Bell, Southwestern Bell and US West do not adequately support the 800 data base (800 DB) rates which are currently under investigation in the Designation Order. Accordingly, the Commission should require the LECs to (1) to remove unsupported exogenous costs; (2) revise basic and vertical features demand; and (3) require the LECs to modify the SMS tariff as detailed in these comments. As a result of improperly included exogenous costs and incorrect demand assumptions, the Commission must require the LECs to revise the 800 DB rates (basic rates would decline further, and vertical features would increase) to reflect the demand and cost errors.

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**COMMENTS OF ALLNET COMMUNICATION SERVICES
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THE BELL OPERATING COMPANIES**

Allnet Communication Services, Inc. (Allnet) herein files its comments on the Direct and Supplemental Cases filed by the local exchange carriers (LECs) pursuant to the above-referenced docket.¹ As will be demonstrated herein, the direct and supplemental cases of the following LECS - Ameritech, Bell Atlantic, BellSouth, NYNEX, Pacific Bell, Southwestern Bell and US West do not adequately support the 800 data base (800 DB) rates which are currently under investigation in the Designation Order. Accordingly, the Commission should require the LECs to (1) to remove unsupported exogenous costs; (2) revise basic and vertical features demand; and (3) require the LECs to modify the SMS tariff as detailed in these comments. As a result of improperly included exogenous costs and incorrect demand assumptions, the Commission must require the LECs to revise the 800 DB rates (basic rates would decline further, and vertical features would increase) to reflect the demand and cost errors.

¹In the Matter of 800 Data Base Access Tariffs and the 800 Service Management Tariff, CC Docket No. 93-129, Order Designating Issues for Investigation, released July 19, 1993 (Designation Order)

I. EXOGENOUS COSTS REMAIN UNSUPPORTED, AND RESULT IN UNJUST AND EXCESSIVE 800 QUERY CHARGES

In its petition against the seven LECs initial 800 DB tariffs, Allnet pointed out that the LECs had included over \$53 million in unsupported and excessive exogenous costs which resulted in excessive and unjust 800 DB rates.² Since that petition, some LECs have removed some exogenous costs from the rate making process, but excessive and unsupported exogenous costs still remain, and must be removed.

A. PACIFIC BELL

Allnet had demonstrated that Pacific Bell had - in violation of the Commission's January 29, 1993 Implementation Order - improperly included costs related to LEC SS7 services and tandem switching costs to upgrade the network to meet Commission 800 implementation timetable in its 800 DB rates. [Allnet Petition at pages 4 and 5]. The Designation Order again cites to the Commission's own previous determination that such core SS7 costs and tandem costs would not be afforded exogenous treatment [Designation Order at ¶25] Regardless of this, Pacific Bell continues to apply exogenous treatment to SS7 costs and tandem switching costs. [Pacific Bell Direct Case at page 10]. The Commission must deny Pacific's continued attempts to include tandem and SS7 costs previously determined by the Commission to be ineligible for exogenous cost treatment. Removal of these costs reduces costs by \$7.85 million. In addition, upon review of the LECs direct cases, Pacific Bell and BellSouth are the only LECs

²Allnet Petition to Suspend for One Day and Investigate, filed march 16, 1993, at pages 3 to 7.

to include any costs associated with accounts 2111 and 2121 (Land and Buildings). Pacific Bell and BellSouth have both failed to explain, and therefore carry the burden to demonstrate that any amounts associated with these accounts should be afforded exogenous cost treatment. Removing these costs from Pacific Bell and BellSouth reduces exogenous costs by an additional \$443,024 for Pacific and \$18,600 for BellSouth.

B. OTHER EXOGENOUS COST PROBLEMS APPLICABLE TO MANY LECs

In the Designation Order, the Commission invited "interested parties to address whether the other exogenous costs claimed by the LECs are reasonable and consistent with the price cap rules and CC Docket No. 86-10." [Designation Order at ¶27] After reviewing the initial tariff filings, subsequent tariff filings, the Direct Cases and Supplemental filings, it is clear that many exogenous costs claimed by the LECs do not warrant exogenous cost treatment. It is evident that the individual LECs did not apply the price cap rules consistently between the LECs, providing enough reason to disallow these costs. Table 1 below provides a side-by-side comparison of how each LEC treated certain costs - specifically repair center, regional/local STPs, local/regional STP links and SSP/related hardware and software.

From the outset, it is important to note that LECs like NYNEX did not appear to request exogenous cost treatment for any of these costs. Any SSP costs claimed as exogenous by any LEC should be disallowed based on the fact that Ameritech conceded it cannot identify any costs associated with SSP costs for 800 database service:

While the AOCs assert that the SSP capability requires exogenous treatment, they [AOC] were unable to identify the 800 Database Service Specific software costs. [Direct Case, Appendix A, page 3, emphasis added]

It appears that Ameritech may have improperly assigned all of the costs of SSP software to 800 DB, even despite its statement above. If Ameritech is not able to identify any SSP 800 DB specific costs, how can any other LEC identify the costs. Further, if no costs are identifiable to 800 DB, then exogenous cost treatment cannot be claimed.

TABLE 1
LEC TREATMENT OF CERTAIN COSTS
(DNA=Did Not Address)

LEC	Repair Center	Regional/local STP	Regional/local Links	SSP Hdw/Soft. ware
Ameritech	DNA	YES, Regional Only	A-Links Only	YES
Bell Atlantic	YES	YES, Reg/Local	A and D Links	NO
Bell South	DNA	RTU fees and Port Charges	YES	YES
NYNEX	NO	NO	NO	NO
Pacific Bell	NO	NO	NO	YES
S W. Bell	NO	NO	NO	YES
US West	DNA	NO	NO	YES

As demonstrated by this Table 1, there is wide variation between LECs as to which costs may be considered as exogenous costs. NYNEX is the ONLY LEC who interpreted the Commission's 800 rules and price cap rules correctly, and did

not seek exogenous cost treatment for any of these costs.

1. Ameritech's Claim of Exogenous Costs For Reprogramming Switches For 3 Digit Screening As Specific To 800 DB Is Incorrect

On page 8 of its Direct Case, Ameritech claims that the costs of "...reprogramming its switches for three-digit screening of 800 numbers, rather than six digit screening, is [was] incurred specifically for 800 Data base Service." This is not correct. The change from 6 digit to 3 digit screening was done for more than the implementation of 800 DB. It allowed Ameritech to provide its own complementary 800 service, it reduced their networking costs and improved Ameritech's efficiency overall. For example, many of the BOCs sought to provide 800 NXX service using the 800 database capability. This allowed them to "install and activate" entire NXX's without having to go to each switch and reprogram it. Accordingly, the Commission should deny Ameritech, and other LECs attempts to receive exogenous cost treatment for costs which were clearly not incurred "specifically" for 800 DB, and that resulted in a benefit to the LEC through reduced costs and increased efficiencies. Ameritech's attempt to treat this type of an upgrade confirms what Allnet, in its original Petition, had demonstrated which was that "...many LECs, including Ameritech, Pacific Bell, and Southwestern Bell under their own business decisions, chose to implement shared 800 systems prior to the requirements for mandatory 800 data base services....and are now expecting customers to share those costs by increasing the capacity of those systems -- even if it would have been cheaper to replace those systems with properly sized-- new systems." [Allnet Petition at pages 5 and 6]

2. Bell Atlantic's Attempt To Include Marketing, Educational, Travel and Seminar Costs As Exogenous Must Be Denied

Bell Atlantic, on page 4 of its Appendix B, details expenses such as travel to 800 industry meeting, training and education, and presentations to FCC staff. Bell Atlantic cannot treat these costs as exogenous. These costs are not specifically attributable to 800 DB. Bell Atlantic even admits this when it stated that "...while the NOF and OBF handle 800 issues in addition to any other network or billing concerns..." [page 4, Direct Case, Appendix B] Furthermore, Bell Atlantic would have attended all of the meetings even if it were not an 800 access provider because it is also an 800 interexchange carrier (i.e., it provides its own 800 service). Expenses, such as customer education and presentations to the FCC clearly are not specifically attributable to 800 DB and required to implement 800 DB, nor do they meet the price cap rules for treatment and must be denied. Even more importantly, no other LEC has attempted -- at least not disclosed -- that such similar expenses warranted exogenous cost treatment.

II. LEC ASSUMPTIONS USED TO DERIVE SPLITS IN DEMAND BETWEEN BASIC AND VERTICAL FEATURES ARE INCORRECT RESULTING IN UNJUST AND EXCESSIVE BASIC 800 QUERY RATES

In its Implementation Order, the Commission expressed concern that "...LECs may be inclined to charge too little for competitively provided vertical features and too much for basic 800 data base access." [¶36, Implementation Order] While the Commission was discussing the necessity of the subindex for 800 vertical features, this concern is justified as a result of what the LECs have managed to do by shifting demand estimates from basic 800 data base to vertical features.

In the Allnet Petition, Allnet clearly demonstrated that the "...high estimate [of vertical features demand] results in understated demand for basic 800 queries and an overinflated query rate. As is summarized [below from the Allnet Petition], other LECs make varying "guesses" at what 800 demand with and without vertical features will be.

	<u>Basic</u>	<u>Vertical</u>	<u>Future Demand Basis for Basic 800 Data Base</u>
Ameritech	40%	60%	1 Year Historic
Bell Atlantic	70%	30%	5 Year Historic
BellSouth	90%	10%	1 Year Historic
NYNEX	Not Provided		4 Year Historic
Pacific Bell	Not Provided		1 Year Historic
Southwestern Bell	Not Provided		Not Provided
US West	Not Provided		Not Provided"

[Allnet Petition at Page 9 and 10]

After reviewing the LECs Direct Cases, it is apparent that the assumptions used to split demand between basic and vertical features were incorrect and discriminatory. This is exemplified by Bell Atlantic's revelation in its Supplemental Direct Case that actual vertical features demand is now only accounting for .34% of the 800 data base demand. That means that 99.64% of the 800 DB demand is for basic 800 data base demand [Supplemental Direct Case of Bell Atlantic at page 7]. Bell Atlantic had initially estimated 800 DB demand as being 70% basic and 30% vertical features. In addition, US West has now informed the Commission that vertical features demand is only .2% of total 800 queries [Attachment C, basis section, line 2] US West previously had not disclosed the split estimate used to derive the initial rates. Southwestern Bell has also now revealed that initially it forecasted vertical feature demand of 15% and 85% for

basic. However, the actual usage is now 5% vertical features and 95% basic.

[Supplemental Direct Case at page 3] Clearly, this results in demand having been underestimated at the outset for basic 800 service queries for all LECs, and thus the initial rates and current rates, unless adjusted, are excessive.

Bell Atlantic's, Southwestern Bell's and US West's experience are likely not unique. They are equally applicable to other LECs service territories, especially Ameritech's original estimates of 40% basic and 60 vertical.

Unfortunately no other LEC identified the split in demand between basic and vertical features, so that a comparison could be made as to how to adjust the initial estimates and revise the basic 800 query rate downward even further after exogenous costs are removed. The Commission must require all of the LECs to revise their rates to reflect the actual current split between demand for basic 800 and vertical features.

III. SMS Terms and Conditions

Many problems exist with the SMS tariff. These are discussed below.

a) Patent Liability -- The BOCs state in their pleading at 5 that the "language used for this [Section 2.1.3(C)(2)] provision is standard in BOC access tariffs approved

by the FCC.” This statement is neither correct nor does it fully address the issue.

In fact a side-by-side comparison, reveals the differences:

(C) The Company shall be indemnified and held harmless by the RespOrg and its 800 subscriber against any claim, loss, or damage arising from the use of the service offered under this tariff, involving ...

(2) Claims for patent infringement arising from the Resp Org's or its 800 subscriber's act combining or using the service furnished by the Company in connection with facilities or equipment furnished by the RespOrg.

-BOC SMS Tariff at 2.1.3(C)

(A) With respect to claims of patent infringement made by third persons, the customer shall defend, indemnify, protect and save harmless the Telephone Company from and against all claims arising out of the combining with, or use in connection with, the services provided under this tariff, any circuit, apparatus, system or method provided by the customer.

-Ameritech Tariff at Section 2.3.8(A)

The BOC SMS is broader in the sense that it identifies claims for liability arising from the use of the service, with a secondary emphasis on the fact that such claims may arise in situations where the service is used with facilities or equipment furnished by the RespOrg. In contrast, the generic language found in the BOC tariffs focuses only on patent claims that arise out of the use or combination of a customer's circuit, apparatus, system or method with the BOC's access service. The difference is meaningful.

Furthermore, the BOC's fail to acknowledge the broader patent protection provision in the SMS tariff at §2.1.3(I) which states that “Notwithstanding anything to the contrary contained in this tariff, whether express or implied, the Company assumes no liability for services procured under this tariff when used in any method or process.” Section 2.1.3(I). This liability provision is particularly unfair if it is allowed to protect the BOCs simply because the tariffed service is “used in any method or process.” This provision completely negates Section

2.1.3(H) which states that the Company will indemnify the RespOrg against claims of patent infringement..." because 1) Section (I) over-rides every other provision and 2) it is unforeseeable how the SMS could not be "used in any method or process."

In sum, all references to patent infringement should be removed and replaced by one provision that simply repeats, word for word, the standard patent infringement language found in other BOC tariffs.

b) Insurance Requirement: At page 6 of the BOC SMS pleading, the BOCs argue for why liability insurance should be required. The BOCs only cite provisions in a BOC interconnection tariff as requiring comparable insurance. However, SMS access is not the same as physical interconnection. In the latter, the customer actually enters the premises of the BOC and, like any physical contractor, could cause physical damage to the premises, and employees of the BOCs. There is little a BOC could do to prevent these harms from occurring outside of physically banning the interconnecting company from its premises. These harms are of the nature of an "externality."

This is not the case with SMS. SMS has extensive built-in protections that are intended to prevent problems. , or could implement protections against these problems. Furthermore, for the potential harms that the BOCs identify in their pleading at 6 (e.g., a RespOrg inadvertently claiming that a customer is intrastate only or improperly routing that RespOrg's customer's traffic), the marketplace will internalize these problems. Specifically, a purchaser will take steps to assure that their RespOrg is competent before signing up with them. Conversely, an incompetent RespOrg will not be in business in the long term because it will

not have customers. These risks are no greater to an individual customer than they were under 800-NXX and, therefore, there is no reason why liability insurance is warranted here.³

c) **Discrimination**: The BOC Pleading at 11 argues that it is impossible for them to discriminate between customers. However, their argument ignores the systematic discrimination that is built into the system between 800/SMS users and SCP Owners. SCP owners obtain all of the 800/SMS user functionality under different terms and conditions than that under which it is provided under the 800/SMS tariff. This allows the BOCs to charge different rates and rate structures for the same or similar functionality. For example, according to the BOC Pleading at 27, there appears no large non-recurring fee for “Mechanized Interface Activation” or “Initiation Installation Testing” for a mechanized interface. In contrast, a non-recurring fee for such interface is in the SMS tariff [SMS Tariff, §4.2(E)]. This is simply one of the many methods of discrimination. Similarly, a view of the allocation of costs between the Tariff and Contract, at Table A of BOC Pleading, indicates a strong bias towards loading costs on the activity that comes under the tariff, rather than on that activity that comes under the contract.⁴

³The final argument made by the BOCs is that insurance will cover any failure to comply with the tariff. Taken to its logical extreme, the BOCs are arguing that if a party has a large enough insurance policy, it need not comply with the tariff provisions. Obviously, this “equality” created by the BOCs makes no sense.

⁴The BOC Pleading at 24 claims that these breakdowns were allocated based on the “cost of rate elements used by each.” However, an attempt to follow the logic of the rate elements in Appendix 1 has proven impossible because of the BOC’s deficient step by step description of what they have tried to do and why they

d) Affiliate Transactions: The BOCs claim that we should not be concerned with the source of the largest single 800 database expense -- Southwestern Bell -- because "SWBT priced its data center services at fully distributed costs." and "Southwestern Bell procured the equipment for the data center upgrade through a competitive bidding process." BOC pleading at 18. Neither of these claims is a basis for a restful night's sleep. First, there is no explanation as to why the provision of the computer services were not put out for bid to allow competition with Southwestern Bell. Second, the affiliate transaction rules require that such computer services be priced at market price. Data processing services are commonly available from many different sources. Section 32.27(d) requires that such multi-sourcable services be "recorded at the market rate."

Even if book value were the proper standard, the figures of Southwestern Bell are highly suspect. For example, almost 100 percent of the computer hardware is allocated to the "unregulated" services (which includes the 800 SMS function), while far more moderate amounts of other major elements (e.g., Disk, Tape) which work with those computers are allocated to the unregulated services. [See, SWBT Direct Case at Exhibit D] Also, the decision of SWBT to arbitrarily have "reclassified from regulated to unregulated" a majority of the services offered by its computer center [SWBT Direct Case at 22], "because these services were being marketed and managed as 'line of business' is highly suspect. Why is the SWBT provision of computer services for 800 services a "regulated service?"

did it. Thus, having failed to adequately justify the rates, the BOCs rates must be found to be unlawful.

There also appears to be much information missing from the SWBT filing for 1993-1997 costs, which it has apparently submitted under confidential treatment. SWBT Direct Case at 21.

In sum, the affiliate transactions here are highly suspect, and the BOCs should be required to obtain the computer services through the competitive bid process, rather than through this non-arms length sweet-heart deal with SWBT.

IV. CONCLUSION

For the reasons set forth herein, the Commission should require the LECs to (1) to remove unsupported exogenous costs; (2) revise basic and vertical features demand; and (3) require the LECs to modify the SMS tariff as detailed in these comments. As a result of improperly included exogenous costs and incorrect demand assumptions, the Commission must require the LECs to revise the 800 DB rates (basic rates would decline further, and vertical features would increase) to reflect the demand and cost errors.

Respectfully submitted,
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Dated: April 15, 1994

CERTIFICATE OF SERVICE

I, J. Scott Nicholls, hereby certify that a copy of the foregoing Comments was served via first-class, postage prepaid, US Mail, to the parties listed on the attached service list, this 15th day of April, 1994.

A handwritten signature in black ink, appearing to be 'J. Scott Nicholls', written over the printed name.

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